IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.179 OF 2007

IN

CRIMINAL APPEAL NO.923 OF 2005

Habib Subrati Siddhiqui ... Applicant

Vs.

State of Maharashtra ... Respondents

Mr. Y.M. Chaudhari i/b Ms. Sarojini Upadhay for the applicant.

Dr. F.R. Shaikh, Addl. P.P. for the State.

ALONG WITH

CRIMINAL APPLICATION NO.874 OF 2007

IN

CRIMINAL APPEAL NO.1360 OF 2006

Vimal Dinkar Parse ... Applicant

Vs.

State of Maharashtra ... Respondents

Ms. Sonia S. Miskin, appointed advocate.

Dr. F.R. Shaikh, Addl. P.P. for the State.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATED : AUGUST 2, 2007.

P.C.:-

1. Applicant in Criminal Application No.179 of 2007 is original accused 1. The applicant in Criminal Application No.874 of 2007 is original accused 3. Both of them were tried along with accused 2 (since acquitted) for offences punishable under sections 302 read with section 34 and section 404 and 182 of the Indian Penal Code (for short, "the IPC").

2. By the order impugned in the appeals filed by them, the applicants have been convicted under section 302 read with section 34 of the IPC and sentenced to life imprisonment. Their appeals have been admitted. We are dealing with their bail applications.

3. We have heard the learned counsel appearing for the applicants and the learned A.P.P. appearing for the State.

4. It appears that the incident in question has taken place on 13/7/2003 at 3.00 a.m. The prosecution has alleged three circumstances against the accused. The case of the prosecution is that the deceased was found dead in a room on the first floor in a brothel situated at Hanuman Tekadi at Bhiwandi. The first circumstance against the accused is that they were seen running at about 3.00 a.m. on the day of the incident from the place where the dead body of the deceased was found. According to the prosecution, at that time i.e. at about 3.00 p.m., PW-1 and PW-3 were chitchatting on the ground floor of the building. PW-3 is a sex worker and PW-1 is the brothel keeper. They saw the accused running away. PW-3 had told PW-1 to find out why the accused are running away. PW-1 ran after the accused. On the way, she took the help of PW-2, who is an auto-rickshaw driver. PW-1 and PW-2 continued to chase the accused. They caught accused 1 and 3. They were brought to PW-3 – the brothel keeper. PW-3 is

said to have asked the accused as to why they were running away. According the prosecution, accused 3 stated that accused 1 and 2 have killed the deceased, who is also a brothel keeper. This is the second circumstance against the accused.

5. Third circumstance which is taken against the accused is that the police recorded the FIR of accused 3. In that FIR, accused 3 stated that accused 1 and 2 have killed the deceased.

6. There is no eye-witness account. The case, therefore, entirely rests on circumstantial evidence. So far as the extra-judicial confession allegedly made by accused 3 is concerned, it is significant to note that it is an exculpatory statement in the nature of an accusation. Prima facie, we feel that it is reasonable to argue that it is, therefore, inadmissible in evidence. So far as the FIR of accused 3 is concerned, it is well settled that it cannot be used against the other accused. It can be used against accused 3 only to show her conduct. In this connection, reliance placed by the learned counsel for the applicant/accused 1 on the judgment of the

Supreme Court in ***Bandlamuddi Atchuta Ramaiah & Ors. v. State of A.P. (1996) II SCC 133*** is apt. We may quote the relevant observation.

> *"17. The legal position therefore, is this : A statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an admission under section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession."*

7. In the circumstances, since there is no direct clinching evidence against the applicants, we are of the opinion that they should be released on bail. We, however, make it clear that whatever we have stated in this order is merely our prima facie opinion. Hence, we pass the following order :

8. Applicant - Vimal Dinkar Parse is ordered to be released on bail on her furnishing a bail bond in the a sum of Rs.5,000/- and

one or two sureties to make up the amount. Applicant - Habib Subrati Siddhiqui is ordered to be released on his furnishing a bail bond in the sum of Rs.10,000/- with one or two sureties to make up the amount. We are informed that the applicant – Habib Subrati Siddhiqui was working in a bakery at Ulhasnagar. The applicant – Habib Subrati Siddhiqui shall, therefore, furnish a local surety from Ulhasnagar. He shall attend the Bhiwandi Police Station once in two months. Applications are disposed of.

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]